

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL LEE NUYEN,

Defendant-Appellant.

UNPUBLISHED

November 18, 2010

No. 293461

Kalamazoo Circuit Court

LC No. 2008-001948-FH

Before: M. J. KELLY, P.J., and K. F. KELLY and BORRELLO, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction by a jury trial of two counts of criminal sexual conduct in the third degree (CSC III). MCL 750.520d(1)(a). The trial court sentenced defendant to two concurrent prison terms of 95 months to 15 years. Because we conclude that there were no errors warranting relief, we affirm.

Defendant's sole argument on appeal is that the trial court erred in admitting into evidence two letters written by the victim while she was undergoing counseling. One letter was addressed to defendant and the other to the victim's parents. We review a trial court's decision to admit evidence for an abuse of discretion. *People v Stamper*, 480 Mich 1, 4; 742 NW2d 607 (2007). A trial court abuses its discretion when it makes a decision that is not within the range of reasonable and principled outcomes. *People v Yost*, 278 Mich App 341, 353; 749 NW2d 753 (2008).

Defendant's trial counsel objected to the admission of the letters on the grounds that they were inadmissible hearsay. See MRE 801; MRE 802. The trial court admitted the letters under the exception to the hearsay rule stated under MRE 803(3). This exception provides that a statement of a then existing mental, emotional, or physical condition is not excluded by the hearsay rule:

A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

The victim's letter to defendant in significant measure related her feelings toward him resulting from the prolonged sexual abuse. The letter contained statements concerning: how defendant negatively impacted her life; how she felt angry, confused, worthless, and unlovable; how she felt responsible for defendant's actions; and how she felt afraid and concerned that defendant would victimize other children. The second letter spoke of her anxiety on the one-year anniversary of the incident that served as the basis of the charges and included similar statements about her feelings. The statements included: how she was happy about never having to be hurt again; how she was really upset on July 3 because of the fear that defendant would appear next to her; and how she felt bad because of her inability to protect other kids. Although these letters clearly included statements that defendant actually sexually abused the victim, which statements could not be used to prove that defendant did in fact sexually abuse her, MRE 803(3), the letters were properly admissible to the extent that they related victim's then existing state of mind resulting from the sexual abuse. *People v Fisher*, 449 Mich 441, 449-451; 537 NW2d 577 (1995). And the victim's state of mind during her counseling was relevant to determining whether the victim's account of events was credible—that is, they were relevant to determine whether she falsely accused defendant to avoid the consequences of her own problematic behavior. Consequently, the letters were admissible for a proper purpose. See *Yost*, 278 Mich App at 355 (noting that evidence that is inadmissible for one purpose may nevertheless be admissible for another purpose with a limiting instruction).

Finally, even if we were to conclude that the trial court erred when it admitted these letters, we would nevertheless conclude that any error was harmless. Defendant's trial counsel did not object to the admission of a third letter in which the victim described her sexual history with defendant at length. In this letter, the victim also made statements accusing defendant of having sexually abused her. Given that the other two letters were merely cumulative to the third letter and were largely confined to the victim's feelings about the abuse, we conclude that any error in the admission of these letters did not affect the outcome. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly
/s/ Stephen L. Borrello